No. 12694.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HARRY THEODORE PETERSEN, IDA PETERSEN, CLAYTON LEON DAIGLE, and AZILE CAROL DAIGLE, Individually and as a Copartnership Doing Business as "The Lodge," and STATE OF CALIFORNIA,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANTS' OPENING BRIEF.

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APPELLANTS' OPENING BRIEF.

I.

Preliminary Jurisdictional Statement.

This action involves a dispute between the United States and the State of California as to which body politic had jurisdiction to issue a license to the appellants Petersen, *et al.,* to sell alcoholic beverages.

The United States filed a suit in a civil nature for injunction pursuant to 28 U. S. C. A. 1345 in the District Court, Southern District of California, Northern Division, on August 5, 1949, against all of the appellants except the State of California to restrain them from selling alcoholic beverage on real property which they owned

and occupied in Wilsonia Village. Wilsonia Village is a part of Section 5, Township 14 South, Range 28 East, Mount Diablo Meridian, California, and is located within the County of Tulare, and within the exterior boundary line of Kings Canyon National Park. It is the contention of the United States that it has exclusive police jurisdiction by virtue of the fact that Wilsonia Village is located within the exterior boundary line of the National Park. [Tr. pp. 2-10.] It was the contention of the United States that the sale of alcoholic beverages without a license from the National Park Service was in violation of the regulations of the Secretary of the Interior, appearing in Title 36, Code of Federal Regulations, Section 12.8. (12 Federal Register 6927; 13 Fed. Reg. 598-599.)

After an answer was filed by the appellants, other than the State of California, it was stipulated and ordered that the State of California be permitted to intervene as a defendant. [Tr. pp. 15-17.] In the answers of both of the appellants Petersen, *et al.*, and of the State of California, it is alleged that the tract of land known as Wilsonia Village, comprised of approximately 120 acres, had always been since the original patent in private ownership. It is further alleged that although this tract of land was within the line made by the exterior boundary of the park, that the State of California had not ceded any jurisdiction to the United States over such property, but on the contrary exclusive jurisdiction for all purposes had remained in the State of California since September 9, 1850. [Tr. pp. 12, 19-20.] The matter was submitted

for trial on a written stipulation of facts, oral argument, and written briefs. [Tr. pp. 44-45.] The Court wrote a Memorandum of Decision, wherein it indicated there was "an actual controversy" justiciable in the District Court between the United States and the defendants and cited 28 U. S. C., Sec. 2201. [Tr. p. 47.] The Court held that the criminal remedy at law was adequate, and, therefore, the injunction would be denied but that a declaratory judgment would be issued. [Tr. p. 53.] Pursuant thereto Findings of Fact and Conclusions of Law were drawn and a Declaratory Judgment was signed, wherein it was held that the United States had exclusive jurisdiction over the privately-owned land known as Wilsonia Village, lying within the exterior boundaries of Kings Canyon National Park. Judgment was entered July 18, 1950. [Tr. pp. 76-77.] The appellants herein filed Notice of Appeal from such judgment within the time allowed by law. [Tr. pp. 77-78; Rule 73(a)], together with designation of record [Tr. pp. 78-80], and statement of points upon which appellants intend to rely. [Tr. pp. 83-85.]

Jurisdiction of the Court of Appeal is invoked pursuant to 28 U. S. C. A., Sec. 1201.

II.
Statement of the Case.

This matter was submitted for decision on Stipulation of Facts, oral argument, and written briefs. The Findings of Fact set forth the pertinent facts which had previously been stipulated to and omit paragraphs XX and XXIX to which an objection was sustained. In this brief, reference to the facts will be confined to the Findings of Fact.

The appellants, except for the State of California, are a co-partnership which operates a cocktail lounge and restaurant known as "The Lodge" where alcoholic beverages are sold to the public. For simplicity in this brief, the group of appellants except the State of California will be referred to as "Appellants Petersen." "The Lodge" is located on Lots 11, 12 and 13 of Block 13 of Wilsonia Tract in Section 5, Township 14 South, Range 28 East, Mount Diablo Meridian, in the County of Tulare, State of California. Some of such appellants own other property in Wilsonia Tract. Wilsonia Tract, Mesa Addition to Wilsonia Tract, and Sierra Masonic Family Club Tract, are tracts located on approximately 120 acres of land within said Section 5, and are generally known as "Wilsonia Village." There are 243 owners of homes located upon the privately-owned land in Wilsonia Village. Other defendants who were permitted to intervene in this proceeding, and who have not appealed herein, represent approximately 63 of said home owners in said

village. The lands are a part of a tract of 160 acres of said Section 5 which was originally patented by the United States Government on October 15, 1891, to one Daniel M. Perry. The area in Wilsonia Village has remained in private ownership since the issuance of said patent, and has been divided into approximately 500 parcels. [Tr. pp. 55-56.]

On November 26, 1947, the appellants Petersen applied to the Department of Interior, Park Service, Regional Office, San Francisco, for a permit to sell alcoholic beverages at "The Lodge." The application was denied on March 3, 1948. The appellants Petersen subsequently requested a reconsideration and an oral hearing, but thereafter withdrew the request. No appeal was taken to the order of denial by the appellants Petersen. The appellants Petersen, as operators of The Lodge, did not, and do not, hold any license as provided by the regulations of the Secretary of the Interior, Title 36, Code of Federal Regulations, Section 12.8, the pertinent text of which appears in the Transcript, pages 62 to 63. [Tr. p. 64.] On April 14, 1948, the appellants Petersen applied to the State Board of Equalization of the State of California for a seasonal on-sale beer and wine and distilled spirits license pursuant to the provisions of the Alcoholic Beverage Control Act of the State of California. A protest was filed on behalf of the National Park Service, Department of Interior, objecting to the issuance of the licenses on the ground that the United States claims exclusive jurisdiction over private lands in Kings Canyon National

Park. Said matter was duly and regularly heard by a Hearing Officer of said Board of Equalization on May 10, 1948, pursuant to the provisions of Subdivision (c) of Section 11517 of the Government Code; and on June 4, 1948, the matter was heard by the Board. The matter came on for hearing again before the Board on July 22, 1948, pursuant to notice given to all parties including the Regional Council for the National Park Service. After consideration thereof, the Board of Equalization issued seasonal licenses. These licenses have been in effect ever since July 22, 1948, on a seasonal basis. [Tr. p. 65.]

Five days later, July 27, 1948, the Regional Director, National Park Service, San Francisco, notified the appellants Petersen by letter that the National Park Service did not recognize the jurisdiction of the State Board of Equalization either to grant or deny the liquor license; and that any sale of liquor at the Lodge without a permit from the Park Service would subject the appellants Petersen to prosecution.

Wilsonia Village is within the Sierra Union School District of the County of Tulare, which maintains a school at Badger in said District. Up until about 1945, a public school was operated by the State School District at General Grant Grove. Said school was located on government-owned land and attended by children from families residing on both government- and privately-owned land. Said school was discontinued when it fell below the required minimum enrollment. [Tr. p. 68.] Some de-

fendants and government employees residing within Kings Canyon National Park vote at general county and state elections at the school at Badger, Tulare County. [Tr. p. 69.]

The National Park Service has fire fighting equipment, consisting of two pump trucks, located at General Grant Grove, approximately one-half mile from Wilsonia Village. Wilsonia Fire District is a district organized under the laws of the State of California which includes only the privately-owned areas in Wilsonia Village and is solely for the purpose of furnishing fire protection to said privately-owned areas. Annual assessments are levied upon the privately-owned lands in said Fire District for said purpose. By agreement with the County of Tulare, said Fire District and the California State Department of Forestry maintain a fire engine at Wilsonia. [Tr. p. 67.]

The Findings quote certain portions of the Federal and State statutes, particularly, 16 U. S. C. A. 57 (41 Stats. 731), 16 U. S. C. A. 80a (54 Stats. 41), California Statutes 1919, Chapter 51, and Section 119 of the Government Code of California [Tr. pp. 57-60], but these statutes will be specifically referred to and portions thereof set forth hereinafter under the heading "Statutory History of Section 5, Township 14."

III.

Specifications of Error.

1. The District Court erred in holding that the State of California has ceded to the United States of America and that the United States of America has accepted from the State of California the exclusive jurisdiction over that area of privately-owned property known as Wilsonia Village.

2. The District Court has erred in holding in effect that that tract of privately-owned land comprising Wilsonia Village was "dedicated and set apart" for park purposes.

3. The District Court erred in holding that the United States Court has jurisdiction of offenses committed within or on lands not reserved or not acquired for the exclusive use of the United States.

4. The District Court erred in holding that the State of California has no jurisdiction to require a liquor license from, or to issue a liquor license to, the appellants Petersen.

5. The District Court erred in holding that a liquor license for premises on privately-owned property in Wilsonia Village should be issued by the National Park Service under regulations of the Secretary of the Interior, and not by the State Board of Equalization of the State of California.

6. The District Court erred in holding that the United States took exclusive police jurisdiction away from the State of California to secure the benefits intended to be derived from the National Park.

IV.

Statutory History of Section 5, Township 14.

A. Federal Statutes.

The first reference to the land in question is found in Section 3 of 26 Stats. 651 (16 U. S. C. A. 471(c)), which was enacted October 1, 1891, and provided that certain forest land in California was reserved and withdrawn from settlement, occupancy or sale and set apart as reserved forest land. Section 1 of the act provided that nothing in the act should be construed as in any wise affecting any *bona fide* entry of land under any law of the United States prior to October 1, 1890.

The next reference from a historical standpoint which can be found relating to Section 5, Township 14, is 31 Stats. 618 (16 U. S. C. A. 78) and which was adopted June 6, 1900. The original act provided that the Secretary of War, upon request from the Secretary of the Interior, was authorized and directed to make the necessary detail of troops to prevent trespassers or intruders from entering the Sequoia National Park, Yosemite National Park and General Grant National Park, respectively, for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law or regulation. This particular section was amended March 4, 1940, by 54 Stats. 43, and the effect of the amendment in so far as we are now concerned is to delete the words "the General Grant National Park."

The next reference to General Grant National Park is found in 31 Stats. 790 (Feb. 15, 1901; 16 U. S. C. A. 79), which provided that the Secretary of the Interior was authorized and empowered under general regulations

fixed by him to permit the use of rights of way to Yosemite, Sequoia and General Grant National Parks for electrical plants, poles and lines, and other easements for pipe lines, water, etc. This particular statute was likewise amended March 4, 1940 (54 Stats. 43) and the reference to General Grant National Park was deleted therefrom.

By 41 Stats. 731, adopted June 20, 1920 (16 U. S. C. A. 57) it was provided that full and exclusive jurisdiction was assumed by the United States over the territory embraced and included within Yosemite National Park, Sequoia National Park, General Grant National Park, respectively, saving certain revisions to the State of California. This statute likewise was amended by 54 Stats. 43 on March 4, 1940, so that the reference to General Grant National Park was deleted.

Section 1 of 54 Stats. 41, adopted March 4, 1940 (16 U. S. C. A. 80), established Kings Canyon National Park, and set out its boundaries and provided for the preservation of rights of citizens. The greater portion of the statute is detailed description of the property embraced within the park; but the description does not include Section 5, Township 14. The statute provides that the property described (Kings Canyon) is hereby "reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and *dedicated and set apart as a public park,* to be known as Kings Canyon National Park, for the benefit and enjoyment of the people; *Provided,* that nothing in sections 80-80(d) of this title shall be construed to affect or abridge any right acquired by any citizen of the United States in the above described area:" and for the protection of certain rights relating to grazing.

Section 2 of the statute (16 U. S. C. A. 80(a)), relates to Section 5, Township 14. This provides that General Grant Park is hereby abolished and that certain described property, together with the lands formerly within the General Grant National Park, and particularly described as follows, to wit, "all of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian, are, subject to valid existing rights, hereby added to and made a part of Kings Canyon National Park and such land shall be known as the General Grant Grove section of said park." The section further provides that General Grant Grove may by proclamation be extended to include certain other properties.

B. State Statutes.

The history of the California statutes regarding cession generally, and also of General Grant National Park specifically, will be set out briefly.

Section 34 of the Political Code was enacted at the time of the adoption of the code in 1872 and provided that the legislature consents to the purchase or condemnation by the United States of any tract of land for the purpose of erecting forts, magazines, arsenals, dockyards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of the state may be served and executed thereon, and so forth. Section 35 of the Political Code was added, but apparently this merely codified Stats. 1873-1874, page 621, and provided for the conveyance of state lands for lighthouse sites.

In 1891 the legislature passed Statutes of 1891, page 262 (chapter 181), which reads in part, as follows:

> "Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, *during the time the United States shall be or remain the owner thereof,* for all purposes except the administration of the criminal laws of this state and the service of civil process therein." (Emphasis added.)

The first statute specifically naming General Grant National Park is Stats. 1919 (Chapter 51, page 74), and provides among other things that exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those several tracts of land *set aside and dedicated for park purposes by the United States* as Yosemite National Park, Sequoia National Park and General Grant National Park, save the right to serve civil and criminal process, and so forth.

The next enactment by the state is to be found in Government Code Section 119 (added by Stats. 1943, Chapter 96) and Section 120 (added by Stats. 1943, Chapter 536). These two sections read as follows:

> "119. Cession of exclusive jurisdiction to United States: Lands in Kings Canyon National Park: Reservations: When jurisdiction vests. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all of the territory which is now or may hereafter be included in those

several tracts of land in the State of California set aside and dedicated for park purposes by the United States as 'Kings Canyon National Park'; saving however to the State of California the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and the right to fix and collect license fees for fishing in said park; and saving also to the persons residing in said park now or hereafter the right to vote at all elections held within the county or counties in which said park is situate. The jurisdiction granted by this section shall not vest until the United States through the proper officer notifies the State of California that it assumes police jurisdiction over said park. (Added by Stats. 1943, ch. 96, section 2.)

"Section 120. Notification of acceptance by United States of exclusive jurisdiction: Filing copies. Upon receipt of notification of the acceptance by the United States of exclusive jurisdiction over lands situated within the State of California, the Governor shall cause to be filed a true and correct copy of said notification in the office of the recorder of the county in which said lands are located and in the office of the clerk of the board of supervisors of the county in which said lands are located. (Added by Stats. 1943, ch. 536, section 2.)"

ARGUMENT.

A.

The Tract of Land Comprising Wilsonia Village Was Not "Dedicated and Set Apart" for Park Purposes.

Neither the written Stipulation of Facts nor the Findings of Fact make any mention that the privately-owned property in Wilsonia Village was or was not "set aside and dedicated for park purposes." The Stipulation of Fact and the Findings of Fact show that the property in question has been in private ownership at all times subsequent to the original patent. The trial court did not make a finding that the private property was "set aside and dedicated for park purposes," but the appellants believe that the effect of the decision of the trial court is that the privately-owned property was "set aside and dedicated for park purposes." The Memorandm Opinion of the trial judge states:

> ". . . Admittedly the lands owned by defendants and the individual intervenors are not 'set aside and dedicated for park purposes' [See 54 Stats. 41, 43 (1940), 16 U. S. C., §§80, 80a]; but it is equally beyond question that 'Wilsonia Village' is, in the language of the California Legislature, 'included in those several tracts of land in the State of California set aside and dedicated for park purposes by the United States as "Kings Canyon National Park".'"

However, the Court did make a finding [See Paragraph XXXIV, Tr. p. 71] that exclusive police jurisdiction by the United States was at the time of said cession and now is necessary in order to secure the benefits intended to be derived from the publicly-owned land dedicated and set apart for park purposes. There were no facts of any kind

in the written Stipulation of Facts to form any basis whatsoever for such finding. It is the appellants' contention that by this finding and by the ultimate determination of the trial court, it determined in effect that the privately-owned property comprising Wilsonia Village had been "dedicated and set apart for park purposes." This determination is contrary to the fact, and is contrary to the law.

We have heretofore pointed out the various statutes of the United States dedicating and setting apart General Grant National Park. It will be recalled that the statute of 1890 merely withdrew the lands from entry but did not affect any entry previously made. This act did not establish a national park, but rather designated the land as reserved forest land. It may safely be assumed that the area was designated a national park by an executive or adminstrative order. At any rate, the next act of Congress (1900) which has come to our attention assumes that General Grant National Park is an accomplished fact. The act of the State Legislature in 1919 ceded exclusive jurisdiction with certain exceptions over the territory which is now or may hereafter be included in those several tracts of land *set aside and dedicated for park purposes by the United States.* This act of cession was accepted by the United States by 41 Stats. 731 (16 U. S. C. A. 57). The statutes have been amended as has been pointed out, particularly by the adoption on March 4, 1940 of 54 Stats. 43 (16 U. S. C. A. 80(a)) and Government Code Sections 119 and 120 by the State Legislature in 1943. Section 119 of the Government Code carries the same words as the previous state statute and it relates to all the territory which is now or may hereafter be included in those several tracts of land set aside and dedicated for park

purposes by the United States. It has been pointed out that 16 U. S. C. A. 80 establishing Kings Canyon National Park describes by metes and bounds the vast area of property, and then provides that such property is reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States and "dedicated and set apart as a public park." The next section then provides for the abolishment of General Grant National Park but provides that such park shall be included in Kings Canyon National Park and be known as General Grant Grove section of such park. There is no actual dedication of any of the property mentioned in Section 80(a). The property is mentioned as follows:

> ". . . All of sections 31 and 32, township 13 south, range 28 east, and sections 5 and 6, township 14 south, range 28 east, of the same meridian . . ."

By the express terms of that act, the Government land within the area described (*i. e.,* Kings Canyon) was "reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States" and was "dedicated and set apart as a public park for the benefit and enjoyment of the people." The Statute, however, provides specifically "that nothing in this act shall be construed to effect or abridge any right acquired by any citizen of the United States in the above-described area." By this same Act, General Grant National Park was abolished and its area "subject to valid existing rights" was added to and made a part of Kings Canyon National Park as General Grant Grove section. The private land affected by this action is within that area. Therefore, all private land was excepted from the dedication to public use by the United States. First, because private land could not be dedicated to the benefit and enjoyment of the peo-

ple without just compensation, under the Constitution of the United States; second, the Statute, by its very terms, affected only lands reserved and withdrawn from settlement, occupancy, or disposal under the laws of the United States . . . in other words, government land; third, because the Statute expressly provided that it should not be construed to affect or abridge any private right acquired by anyone in the area; and, fourth, because the addition of the General Grant Grove section to the park was expressly made subject to valid existing rights.

After this dedication of Kings Canyon and the rededication of the Grant grove section to the park thereof, the California Legislature on April 7, 1943 (Gov. Code, Sec. 119) ceded to the United States exclusive jurisdiction over "those several tracts of land in the State of California *set aside and dedicated for park purposes*" by the United States as Kings Canyon National Park (emphasis added). California, therefore, ceded exclusive jurisdiction only over lands owned by the United States and "set aside and dedicated" for park purposes.

On the other hand, the United States accepted exclusive jurisdiction of the lands dedicated as Kings Canyon National Park by a letter of the Secretary of the Interior dated April 21, 1945 [for the full text of the letter, see Tr. p. 61]. The Secretary stated in the letter, among other things, that he was giving notice pursuant to the Act of October 9, 1940, "that the United States accepts exclusive jurisdiction over all land now included in Kings Canyon National Park" exclusive jurisdiction of which "was ceded to the United States by the act of the Legislature approved April 7, 1943 . . ."

This acceptance did not operate to confer jurisdiction over the private lands of the individual defendants or other

owners of private lands in Wilsonia Village. First, Government Code, Section 119 did not cede such jurisdiction, and acceptance was restricted, by terms, to the cession of jurisdiction by the State. Second, the Secretary of the Interior only had power to accept jurisdiction over government-owned land, because the act of October 9, 1940 (54 Stat. 1083, 40 U. S. C. A. 255) only permitted the Secretary to accept exclusive jurisdiction "over lands or interest therein which have been or shall hereafter be acquired by it" (*i. e.,* the United States), from a State "in which are situated lands which are under his immediate jurisdiction, custody, or control."

That Act concludes "unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." By this language, the policy of restricting the Secretary's acceptance of jurisdiction to land *acquired* by the United States was fixed beyond question. The Secretary of the Interior, therefore, only had power to accept for the United States exclusive jurisdiction over lands or interest which had been acquired by the United States and over which he had immediate jurisdiction, custody, or control; and by his letter of acceptance he could not have secured for the United States exclusive jurisdiction over privately owned property situated in Wilsonia Village.

The only persons or bodies that may make a lawful dedication of any property for any use is the owner thereof. The United States is not and does not contend that it is the owner of any of the property in Wilsonia Village (other than several lots, insignificant to this proceeding). The term "dedication" is defined as the intentional appropriation of land *by the owner* for proper public use.

(16 Am. Jur. 348.) It is elementary that it is essential to a valid dedication that it be made by the legal or equitable owner of the fee, or at least, with his consent. (16 Am. Jur. 352, section 9, and particularly cases cited therein.) Particular reference is made to *United States v. City of Chicago,* 48 U. S. 185, where it was contended by the City of Chicago that streets which had been laid out by the United States Government at Fort Dearborn had been dedicated to public use, but wherein the Supreme Court held that such property had been acquired by the United States as part of the Northwest Territory as a military fort and therefore it was not subject to some of the other conditions relative to public lands and any act of an agent of the government was not binding on the United States.

The fact that a State does not and cannot cede jurisdiction of private lands within its borders is recognized in many authorities which will be hereinafter pointed out in this brief. Among others, not discussed later, is *In re O'Conner,* 37 Wis. 379, 19 Am. Rep. 765, where the Court held that an attempted cession of jurisdiction by the State over a Federal home for soldiers was void because the United States did not own the land in question. In *United States v. Schwalby* (Texas), 29 S. W. 90, 92, the Court held that a State could not cede jurisdiction to real property unless the United States was the owner, and that it was not intended by either the State nor the Federal Government that a State should cede jurisdiction over private lands within its borders. Other similar cases, such as *Rodman v. Pothier,* 264 U. S. 399, 44 Sup. Ct. 360, 68 L. Ed. 759; *Pothier v. Rodman,* 291 Fed. 311, and *Adams v. United States,* 319 U. S. 312, 63 Sup. Ct. 1122, 87 L. Ed. 1421, will be pointed out in more detail

hereinafter. It is respectfully submitted that the property in Wilsonia Village has never been dedicated and set apart for park purposes. The various acts of cession of the State of California relate only to the property which has been dedicated and set apart for park purposes.

B.

The United States Courts Do Not Have Jurisdiction of Offenses Unless Committed Within or on "Lands Reserved or Acquired for the Use of the United States."

The District Court concluded that the extraordinary remedy of injunction was not warranted in this case. It held that there was adequate criminal remedy for a violation of the regulations of the National Park Service. [Tr. p. 74.] In determining that the United States had jurisdiction either by criminal remedy or otherwise the Court failed to take into consideration the basic jurisdictional statute.

For years the United States Criminal Code has provided that the Federal Courts have jurisdiction over crimes and offenses when committed within or on any lands reserved or acquired for the exclusive use of the United States. This was so provided in section 272 of the Criminal Code, and was found in Title 18, United States Code, section 451 before the change in the Code approved June 25, 1948. The section is now found in Title 18, United States Code, section 7, and provides that the term "special maritime and territorial jurisdiction of the United States" as used in this title includes:

> "3. Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or

otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dock-yard, or other needful buildings."

One of the cases most directly in point in support of the position of the appellants is the case of *Pothier v. Rodman, U. S. Marshal,* 291 Fed. 311 (First Circuit, 1923). That was an appeal from an order denying a petition for writ of habeas corpus. Pothier was indicted in the District Court in the State of Washington for a murder committed on October 25, 1918 on Camp Lewis Military Reservation. Pothier was arrested and apprehended in the State of Rhode Island and objected to his removal to the Federal Court in the State of Washington. The facts show that the State of Washington had authorized Pierce County, Washington, to acquire approximately 70,000 acres of land and convey it to the United States under certain conditions. One of the conditions was that upon such conveyance being concluded a sufficient description and an accurate map or plat of each tract or parcel of land be filed in the Auditor's office in Pierce County, together with copies of the orders, deeds, patents or other evidences in writing of the title of the United States. The deed was not executed and acknowledged until October 1, 1919, when it was signed and acknowledged by the board of county commissioners and accepted on behalf of the United States by the Secretary of War, and it was not recorded until November 15, 1919. However, the District Court in passing upon the question apparently entertained the view that inasmuch as the evidence showed that before the delivery of the deed and its acceptance, the United States Military Authorities had entered upon some of the land acquired by the county and erected buildings

and occupied the same with 50,000 men, the state thereby yielded up its sovereignty and the United States acquired exclusive jurisdiction over the land thus occupied, and that this being so, the prima facie case of probable cause made by the indictment was not overcome. However, the Circuit Court of Appeals held that at the time the crime charged in the indictment was committed the United States had acquired no title to the land embraced within Camp Lewis and that the sovereignty of the state over the land had not then been yielded up and was not yielded until the deed, maps, and so forth were filed in the office of the County Auditor of Pierce County for record, which was not until November 15, 1919, more than a year after the alleged murder.

On further appeal (*Rodman v. Pothier,* 264 U. S. 399, 44 S. Ct. 360, 68 L. Ed. 759), the Supreme Court reversed the Circuit Court of Appeals, but did not determine the question of exclusive jurisdiction but held that that was a matter to be determined by the trial court where the indictment was found. The Supreme Court stated that whether the locus of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law, which must be determined by the court where the indictment was found. The regular course may not be anticipated by alleging want of jurisdiction and demanding a ruling thereon in a *habeas corpus* proceeding. Barring certain exceptional cases (unlike the present one) the Supreme Court has uniformly held that the hearing on *habeas corpus* is not in the nature of a writ of error, nor is it intended as a substitute for the functions of the trial court. Manifestly, this is true as to disputed questions of fact, and it is equally so as to disputed matters of law, whether they relate to the sufficiency of the indict-

ment or the validity of the statute on which the charge is based. These and all other controverted matters of law and fact are for the determination of the trial court.

In a more recent case, the Supreme Court of Montana, in *Valley County v. Thomas,* 109 Mont. 345, 97 P. 2d 345, followed the decision of *Rodman v. Pothier* (*supra*), 264 U. S. 399, 44 S. Ct. 360, 68 L. Ed. 759, and similar cases. The court pointed out that it is well settled that the state statutes relinquishing public power or jurisdiction are to be strictly construed, and that every presumption is insistent on the side of the state sovereignty compelling a dissolution of every doubt in its favor. See particularly the discussion of the Court on pages 358 and 359 of Pacific Reporter.

In *Adams v. United States,* 319 U. S. 312, 63 S. Ct. 1122, 87 L. Ed. 1421, the question of the jurisdiction of the Federal Courts was certified to the Supreme Court by the Circuit Court of Appeals. The ultimate question to be determined was whether Camp Claiborne, Louisiana, was within the federal criminal jurisdiction. In this particular case the government had acquired title to the land at the time of the crime, but it had not given notice as required by the Act of October 9, 1940 (40 U. S. C. A., Sec. 255). The Supreme Court in discussing the act of Congress and its effect, stated as follows:

> "The legislation followed our decisions in James v. Dravo Contracting Co., 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, 114 A. L. R. 318; Mason Co. v. Tax Commission, 302 U. S. 186, 58 S. Ct. 233, 82 L. Ed. 187; and Collins v. Yosemite Park Co., 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502. These cases arose from controversies concerning the relation of federal and state powers over government

property and had pointed the way to practical adjustments. The bill resulted from a co-operative study by government officials, and was aimed at giving broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction. The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained 'no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction.'

"Both the Judge Advocate General of the Army and the Solicitor of the Department of Agriculture have construed the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advised us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation. Cr. Bowen v. Johnson, 306 U. S. 19, 20, 30, 59 S. Ct. 442, 83 L. Ed. 455. Besides, we can think of no other rational meaning for the phrase 'jurisdiction, exclusive or partial' than that which the administrative construction gives it.

"Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.

"Our answer to certified question No. 1 is Yes and to question No. 2 is No."

In *United States v. Tully,* 140 Fed. 899, it was held that the United States did not have jurisdiction over land actually used for a military reservation if it was not the owner of such land. In this particular case, the headquarters of Fort Missoula Military Reservation was located upon the particular land in question, although the land was not owned by the United States but by the state. The Constitution of Montana specifically provided that the United States had exclusive jurisdiction over certain military reservations, including Fort Missoula. However, the Federal Court held in line with all of the authorities both before and after, as cited herein, that the United States did not have jurisdiction over that portion of Fort Missoula Military Reservation.

In a New York case (*People v. Bondman,* 291 N. Y. 213), the defendant was charged with the crime of manslaughter committed on lands occupied by the United States under lease and used as a camp for civilian conservation corps. The defendant moved to dismiss the indictment on the ground that the United States had acquired exclusive jurisdiction over the lands under a consent statute of the State of New York, and that the federal courts had jurisdiction over the offense under Section 371 of Title 28, United States Code—manslaughter being one of the crimes enumerated in that section and defined under Section 453 of Title 18. In denying the motion, the Court held that the use of the property under lease was not a purchase of property or an acquisition of property under the provisions of the Federal Constitution.

A few cases involving the leasing or temporary use of land will now be pointed out. In an early federal case which involved the lease of land by the United States for one month, with the privilege of using it for six months, the Court in *United States v. Tierney,* 28 Fed. Cas. No. 16517, said:

> ". . . The constitution clearly implies the permanent use of the property purchased for the construction or erection of some of the structures designated, or some other needful building. It would be strange, indeed, if such an agreement for renting a piece of land to the United States should deprive the State of Ohio of all jurisdiction over it, and confer sole and exclusive jurisdiction to the United States."

The same rule has been followed in more recent decisions of the state courts. In an Alabama case (*Brooke v. State,* 155 Ala. 78, 46 So. 491), the Supreme Court of that state held that the state courts had jurisdiction to try the defendant charged with the commission of a crime within a post office situated on land which the United States occupied under lease, notwithstanding the existence, at the time the lease was entered into, of an Alabama statute authorizing the United States to "acquire and hold lands" for the construction of needful government buildings. In a Maryland case (*Mayor and City Council of Baltimore v. Linthicum,* 183 Atl. 531, 533), it was held that the zoning laws of the City of Baltimore

were applicable to property leased by the United States for the purpose of a post office. The Court held:

> ". . . it may be observed that the property is not owned by the United States; there is only a lease limited to ten years' duration, or the duration of appropriations for rentals, and the lessee has only such property rights as may be derived from the owner. . . . The property is not, therefore, within the exclusive jurisdiction of the United States under the United States Constitution, article I, sec. 8."

On the question of whether or not enforcement of the ordinance would constitute an interference with federal function, the Court said:

> ". . . Any interference of the local police regulations with the mails would be, at most, an indirect one, and to pass on the objection on that ground we should have to consider the rule and the decisions on local regulations interfering only incidentally with federal powers."

It is submitted that under the basic law vesting jurisdiction in the United States Courts, that the District Court would not have jurisdiction for any alleged offense for selling alcoholic beverages at "The Lodge." This fundamental proposition should entirely dispose of the appeal herein. The limitation of jurisdiction expressed in Subdivision 3 of Section 7 of Title 18 is in accordance with the established legal philosophy on the relation between the States and the National Government.

C.

The United States Does Not Acquire Exclusive Jurisdiction Unless It Owns the Property Involved.

It is the State's contention that the legal philosophy of the relationship between the States and the National Government ever since the founding of the Union has been that the United States does not and can not have exclusive jurisdiction of any parcel of land (other than the District of Columbia) unless it is the owner of the parcel of land involved. We believe this philosophy is so ingrained that there has been little occasion for any decision directly on the point. There are innumerable decisions which appear to accept this legal philosophy as a premise, without question. Furthermore, it will be pointed out later herein that Congress has likewise accepted this philosophy without question.

Section 8, cause 17 of the United States Constitution provides that Congress is authorized to exercise exclusive legislation in all cases whatsoever over the District of Columbia "and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; . . ."

In the proceedings before the constitutional convention on September 5, 1787, it was contended by Mr. Gerry that the power of this latter clause might be made use of to enslave any particular state by buying up its territory and that the strongholds proposed would be a means of awing the state into an undue obedience to the general government. Mr. King himself thought the provision unnecessary, the power being already involved, but would move to

insert after the word "purchase" the words "by consent of the legislature of the state" and that this would certainly make the power safe. The clause was accordingly amended, and it will be observed that the clause now reads in accordance with the amendment made on September 5, 1787. (Max Ferrand, "The Records of the Federal Convention," Vol. 2, pp. 508, 510.)

It was first thought that the only way the United States could acquire exclusive jurisdiction under this clause was by the purchase of the property, the term "purchase" being defined in the popular sense of purchase as distinguished from the definition of "purchase" as peculiar to real property with respect to descent and distribution. It is now well settled that when lands are acquired or held by the United States within a state, whether acquired by purchase or by the exercise of its power of eminent domain, or where public lands of the United States have been set aside or reserved to the Federal Government for such particular purpose, the state may cede to the Federal Government jurisdiction over such lands to the same extent that the government might have acquired exclusive jurisdiction had the lands been purchased with the consent of the state for the purpose authorized in clause 17.

Fort Leavenworth Railroad Co. v. Lowe, 114 U. S. 525, 29 L. Ed. 264, 5 S. Ct. 995.

See also:

54 Am. Jur. 597, 599.

It is not contended that General Grant National Park or any of the other national parks were acquired under this provision of the constitution. Furthermore, it is no longer open to question that the United States can acquire

exclusive jurisdiction, with the consent of the state, over land for some purpose other than under clause 17.

Collins v. Yosemite Park & Curry Co. (*supra*), 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502.

The attention of the Court has already been directed to the cases of *Rodman v. Pothier, supra,* 264 U. S. 399, 44 Sup. Ct. 360, 68 L. Ed. 759; *Adams v. United States, supra,* 319 U. S. 312, 63 Sup. Ct. 1122, 87 L. Ed. 1421, and *People v. Bondman, supra,* 291 N. Y. 213.

In *James v. Dravo Contracting Co.,* 302 U. S. 134, 58 S. Ct. 208, 82 L. Ed. 155, the question involved was whether the Dravo Contracting Co., a Pennsylvania corporation, was liable for a tax on the gross receipts on contracts to the State of West Virginia on a group of contracts with the United States for the construction of locks and dams in the Kenawha River and Ohio River. Much of the material was prefabricated in the contractors' shops in Pittsburgh, Pennsylvania. The court held that the State of West Virginia could not tax any of the work performed in Pennsylvania. It was contended that the tax was invalid for the reason that it laid a direct burden upon the Federal Government, but the court by a divided court rejected this contention. As to the property leased by the contracting company in the State of West Virginia by the site, the court stated there could be no question as to the jurisdiction of the state over that area. We are concerned with the remaining portion of the opinion, which has to do with the title of the property where the locks and dams were actually constructed, that is, on the beds of the rivers. The court held that the title to the beds of the rivers was in the state, and that although the Federal Government may have paramount authority for the con-

struction of the dams and locks, nevertheless the title was in the state. There is considerable discussion in the case with reference to exclusive and concurrent jurisdiction and the power of the state to refuse to yield jurisdiction and the right of the Federal Government to decline to accept jurisdiction. The court points out that the transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable in the interests of both the national government and the state that the latter should not be entirely ousted from its jurisdiction. The possible importance of reserving to the state jurisdiction for local purposes which involve no interference with the governmental functions is becoming more and more clear as the activities of the government expand, and large areas within the states are acquired. The court concluded that as far as the territorial jurisdiction is concerned, the state had authority to lay the tax with respect to the activities of the contracting company carried on at the respective dam sites.

The Supreme Court of the State of Oregon reached a similar conclusion a few months earlier in a similar case, in *Atkinson v. State Tax Commission,* 156 Ore. 461, 67 P. 2d 161. This case involved a contractor who had a contract involving the construction of Bonneville Dam Project on the Columbia River. There is a slightly earlier case to the same effect by the Supreme Court of the State of Washington of *Ryan v. State,* 188 Wash. 115, 61 P. 2d 1276, involving work performed on Grand Coulee Dam. The latter case was appealed to the Supreme Court of the United States and decided on the same day as *James v. Dravo Contracting Co.* (*supra*), 302 U. S. 134, 58 S. Ct. 208, together with the case of *Silas Mason Co., Inc. v. State Tax Commission of the State of Washington,* 302 U.

S. 186, 58 S. Ct. 233, 82 L. Ed. 187. The Supreme Court concluded that the state had territorial jurisdiction to impose the tax.

In *Johnson v. Morrill,* 20 Cal. 2d 446, 126 P. 2d 873, a question arose as to the right of the various petitioners to register as electors in the County of Solano. The United States was not a party to that proceeding. The petitioners were all employed in national defense activities at Mare Island Navy Yard near the City of Vallejo, Solano County, and resided in various defense housing projects constructed outside the confines of the navy yard. The question presented was whether the United States had acquired exclusive jurisdiction of the areas occupied by these defense housing projects on which the petitioners resided, so as to prevent the exercise by the petitioners of the right of suffrage in said County and in the State of California. None of the projects involved had been expressly accepted for exclusive jurisdiction by the United States by the filing of any notice of acceptance of exclusive jurisdiction. The petitioner Cohen resided on property which was leased by the Federal Government from Carquinez Development Company. It was pointed out by the Supreme Court that the parties to the present proceeding are in agreement that exclusive jurisdiction over that land was not acquired by the United States Government because the land was not "purchased" as provided by Section 8 of the Constitution; and therefore the petitioner Cohen who resided in that area would be entitled to register as an elector residing in Solano County. This statement by the Supreme Court disposed of the petition filed by the petitioner Cohen. The other petitioners lived in various different places and different federal housing projects, all of which were on federally-owned property, and which were financed either by

the Lanham Act or other federal statutes. The State Supreme Court, discussing the matter, pointed out some of the general principles of law relative to the authority of the government and the cession of jurisdiction and acceptance thereof, and that there had been no express application for or consent to the exercise of exclusive jurisdiction by the United States Government in this case. The court considered the term "other needful buildings" and cited numerous cases, and pointed out that the term has been held to include lots and dams, post offices, customs houses, Indian training schools, homes for disabled volunteer soldiers, and war chemical manufacturing plants, but that in each of these cases as distinguished from the present proceeding, *the property was acquired for use by the United States Government in the performance of a governmental function,* and exclusive jurisdiction was consented to or ceded by the state and was exercised by the United States. Land acquired by the United States which is not subject to the exclusive legislative authority vested by the Constitution, remains subject to the jurisdiction of the state in matters not inconsistent with the free and effective use of the land for the purposes for which it was acquired. The court concluded that all of the petitioners were entitled to all of the rights of citizens.

The Legislature of the State of New York ceded to the United States jurisdiction over certain lands in and adjoining the City of Brooklyn "belonging to the United States and used and occupied as a navy yard and local hospital * * * for the uses and purposes of a navy yard and naval hospital," and provided that "the United States may retain such use and jurisdiction as long as the premises described shall be used for the purposes for which jurisdiction is ceded and no longer." The United States

leased a certain parcel of this area to the City of Brooklyn "to be used only as a stand for the market wagons to bring produce into the city." The court held that the land in question was clearly not used by the United States and occupied by it for a navy yard or naval hospital and that the exclusive authority of the United States over the land covered by the lease was at least suspended while the lease remained in force.

> *Palmer v. Barrett,* 162 U. S. 399, 404, 16 S. Ct. 837, 40 L. Ed. 1015.

The State of Virginia ceded certain lands at Old Point Comfort to the United States with exclusive jurisdiction over the same "for the purpose of fortification and other objects of national defense." Under authority subsequently granted by the general assembly, a portion of the area was leased by the United States to private interests for the construction and operation of a hotel. In *Crook, Horner & Co. v. Old Point Comfort Hotel Company,* 54 Fed. 604, there was involved the application of certain of the state lien laws. The United States District Court held that the state lien laws were applicable within the hotel site because the property had been leased for hotel purposes jurisdiction had re-vested in the State of Virginia. The court observed:

> "It is evident that this act contemplated the use of land simply for a fort, that its use for any other purpose would cause a reverter both of title and jurisdiction."

In *Arlington Hotel Company v. Fant,* 278 U. S. 439, 49 S. Ct. 227, 73 L. Ed. 447, there was involved the operation by private interests of a hotel on government-owned land. The Supreme Court held that the land was within

the jurisdiction of the United States. In that case the State of Arkansas ceded to the United States the exclusive jurisdiction over the Hot Springs Military Reservation which embraced a small hospital site and a contiguous parcel on which a hotel was being operated under a lease from the United States. The court held that this hospital and hotel site were within the jurisdiction of the United States because of the federal purpose to which the springs and hospital were devoted and that they properly included the hotel which was operated for the convenience of persons seeking the benefit of the springs, and offered means whereby the public might be aided by surplus water not needed by the hospital. However, it will be observed that the court considered this use a public use and not a private use.

The necessity of the public purpose was pointed out in the case of *Fort Leavenworth Railroad v. Lowe* (*supra*), 114 U. S. 525, 542, 5 S. Ct. 995, 29 L. Ed. 264, where it was stated that the jurisdiction granted by a state is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used, the jurisdiction reverts to the state.

In *LaDuke v. Melin,* 45 N. D. 349, 177 N. W. 673, it was likewise held that the jurisdiction over a military reservation reverted to the State when the Government abolished the reservation.

In *Utah & Northern Railway Co. v. Fisher,* 116 U. S. 28, 29 L. Ed. 542, it was contended by the Railway Company that it was not liable for taxes on that portion of its railroad in an Indian Reservation by reason of the fact that such land and its railroad was within the exterior

boundaries of the Reservation. The Court held that the territorial government had jurisdiction.

It has been pointed out hereinabove that the United States cannot, under existing laws, acquire any part of the states' jurisdiction over lands within the states' borders unless title to the land has vested in the United States. It follows in such cases that, when the United States has divested itself of title, it relinquishes the jurisdiction acquired from the state. Jurisdiction acquired from a state by the United States will re-vest in the state when the United States ceases to use the land for any of the purposes for which its acquisition was authorized. Such reverter of jurisdiction may result from the (a) express condition of the grant by the state or (b) by operation of law.

The Congress of the United States, in adopting numerous laws relative to the jurisdiction of National Parks has definitely and consistently recognized the principle that the United States does not acquire jurisdiction unless it owns the land in question. For example, with reference to Yosemite National Park, the Secretary of Interior was authorized to acquire privately-owned land. The Statute provides that when title to the aforesaid privately-owned land has been vested in the United States, all of the land described shall be added to and become part of Yosemite National Park and "shall be subject to all laws and regulations applicable thereto." (16 U. S. C. A. 47(e).) Pursuant to 16 U. S. C. A. 51, the Secretaries of the Departments of Interior and Agriculture, for the purpose of eliminating private holdings within Yosemite National Park, may exchange other lands therefor. It is further provided that when such patented lands are thus acquired, such lands shall become part of Yosemite National Park

subject to all provisions relating thereto. By 16 U. S. C. A., Sec. 45(a), the Secretary of Interior is authorized to accept title to lands and interest in land near the entrance to Sequoia National Park. Upon acceptance of title, the land shall thereafter be subject to all laws and regulations applicable to the park. There are innumerable other statutes of similar nature relative to National Parks and jurisdiction of the United States. Without discussing these individually, they will be referred to. These sections include: 16 U. S. C. A., 161(e) (Glacier National Park); 16 U. S. C. A., 167(a) (Glacier National Park); 16 U. S. C. A., 192(b) (Rocky Mountain National Park); 16 U. S. C. A., 243 (Roosevelt Recreational Demonstration area Project); 16 U. S. C. A., 251(a) (Olympic National Park); 16 U. S. C. A., 261 (Cumberland Gap-Cumberland Ford); 16 U. S. C. A., 343(b) (Acadia National Park); 16 U. S. C. A., 403(c) (Subdivision h) (Shenandoah Park); 16 U. S. C. A., 404c-11 (Mammoth Cave National Park); 16 U. S. C. A., 424b (Chickamauga and Chattanooga National Military Park); 16 U. S. C. A., 403h-11 (Great Smoky Mountains National Park).

We recognize that neither the government nor the state will be bound by an expression of views of an individual officer or an employee thereof, no matter how carefully considered those views are, unless, of course, the individual occupies one of those few and rare positions of high authority. Furthermore, the fact that such views are pertinent to an agency and published at government expense by such agency would not bind either the state or the government. The writer has examined many articles upon the subject embraced in this brief, but the most comprehensive and helpful that has been found is one published by the government printing office by the United

States Navy in 1944 by Peter S. Twitty, and entitled, "The Respective Powers of the Federal and Local Governments Within Lands Owned or Occupied by the United States." The views expressed, particularly on pages 29 to 34 thereof, are contrary to the position of the government.

The facts show that entry was made upon the particular property more than 60 years ago, and that approximately 60 years ago, the United States Government issued a patent for the particular land in question. All of the land within an area near General Grant Grove was withdrawn from entry and was set aside as reserved forest land. Some time during the next decade, General Grant National Park was established. Out of the original 160 acres, approximately 120 acres has been subdivided and is owned by 243 persons and has been in private ownership ever since the original patent. This property is located in the County of Tulare. There has been established pursuant to the laws of the State of California a Fire District. The State Division of Forestry and the Fire District maintains fire fighting equipment at Wilsonia. Furthermore, elementary schools have been established and maintained for the residents of Wilsonia Village, one such school having been conducted until a few years ago, when the enrollment fell below the required minimum, on National Park land at General Grant. In other words, there has been every indication, not only by the residents of Wilsonia Village and the County of Tulare but also of the United States Government that Wilsonia Village was and is a part of the State of California and subject to its laws.

It is the Government's contention that it has obtained exclusive jurisdiction of this small area of privately-owned land which has never been dedicated nor set aside for park purposes, by the mere fact that the line describing

the boundary of Kings Canyon National Park encompasses this particular private property. To state such a rule is to show how fallacious it is. By the same token, if any property is located within the boundary line as described in the State Constitution of California, then, by such fact it is within the exclusive jurisdiction of the State of California. The Government's contention that it has exclusive jurisdiction over all the territory within the exterior boundaries of Kings Canyon National Park reminds us of the legend of Dido, who purchased a piece of ground near the Phoenician colony of Utica, from the Numidian King Irbas. Dido purchased as much land as could be encompassed with a bullock's hide, and after the agreement she cut the hide into small thongs and thus enclosed a large piece of territory. On this site, she biult the City of Carthage.

Conclusion.

Wilsonia Village, and particularly the lands on which "The Lodge" is located, is not "reserved or acquired for the use of the United States" and, therefore, under the provisions of Subdivision 3 of Section 7 of Title 18 of the United States Code, the United States does not have jurisdiction of any alleged offenses. This one provision of the United States criminal code and of the authorities relating thereto should conclusively dispose of this appeal, and require that this Court reverse the judgment appealed from.

Furthermore, the particular land in question in Wilsonia Village has never been dedicated and set apart for park purposes. The Government has never purported to dedicate or set apart the particular land for park pur-

poses; and, indeed, the only one who could lawfully do so would be the owners thereof. The State of California, on the other hand, has ceded jurisdiction to the Federal Government and the Federal Government has accepted that cession only of land dedicated and set apart for park purposes. Since the particular land in Section 5, Township 14, has never been dedicated and set aside for park purposes, obviously jurisdiction has never been ceded by the State of California nor accepted by the United States Government.

The legal philosophy ever since the founding of this country, has been that the United States does not and cannot acquire exclusive jurisdiction unless it actually owns the property concerned. This philosophy has been recognized consistently by all of the courts. Likewise, it has been recognized and is recognized by the Congress of the United States. It is specifically so provided in the criminal code of the United States. Two of the essentials to exclusive jurisdiction by the United States are: (1) ownership, and (2) use. The express provisions of the United States Criminal Code recognize this fundamental rule.

Finally, this case involves whether or not a person shall exercise the privilege granted to him by a license issued by the State of California pursuant to the Constitution of the State of California to sell liquor. There is no contention that the appellants Petersen, *et al.*, are violating any State law whatever nor that they are conducting their business in an improper manner nor that they are endangering the National Park by the sale of liquor or the operation of such business. The contention simply is that the appellants Petersen, *et al.*, should secure a permit not

from the State Board of Equalization but from the National Park Service. Obviously, therefore, any claim of "necessity" is not well founded. Indeed, it is strange that after 60 years, the view now develops by some that exclusive jurisdiction in Wilsonia Village is necessary to secure the benefits of the National Park.

The appellants respectfully request that the judgment appealed from be reversed.

Respectfully submitted,

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